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NORCAL WASTE SYSTEMS, INC.

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Permitting and Enforcement Division
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SENT VIA ELECTRONIC MAIL
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Re: Permit Implementation Regulations (AB 1497)

Dear Ms. Garcia,

Thank you for accepting comments on the proposed regulatory text implementing the requirements of Assembly Bill 1497 (Stats. 2003, Ch. 823). Norcal Waste Systems, Inc.'s operating companies hold permits for facilities located in California. As a stakeholder, we have been active during the year-long informal rulemaking process to solicit input from stakeholders in the scoping and drafting of the proposed regulations. Consistently, we have requested a set of workable regulations that adhere closely to the statute by providing clear and consistent due process for applicants throughout the state. To date, several sections remain somewhat vague or confusing and difficult to interpret. The purpose of the package, the workshops, the hearings and our participation is to provide greater certainty for the public, operators and Enforcement Agencies (EAs) alike on what actions are required to address permit changes. To be clear and constructive, the following letter lists each element of the regulation with which we still find issue. Our suggested amendments follow each issue.

Article 1. General
Section 21563. CIWMB – Scope.

Issue

1. Section 21563(d)(1) defines “complete” in the following manner:

"Complete" means all requirements placed upon the operation of the solid waste facility by statute, regulation, and other agencies with jurisdiction have been addressed in the application package.

Although the definition of “complete in (d)(1) is consistent with the current regulations, we find that differs from the more succinct and specific definition of “complete” provided by 14 CCR Section 18101(d):

“Complete” means all information required as part of a solid waste facilities permit application submitted pursuant to this Article has been provided.

It seems opportune to us to adjust the definition through this process. Please amend Section 21563(d)(1) so that it is consistent with 14 CCR Section 18101(d).

2. Similarly, the definition for “correct” is inconsistent with 18101(c). Please replace the proposed definition of “Correct” in **Section 21563 (d)(2)** with the existing definition provided by 14 CCR Section 18101(e):

“Correct” means all information provided by the applicant as part of a solid waste facilities permit application submitted pursuant to this Article is accurate, exact, and fully provides the applicable filing requirement information for the solid waste facility for which a permit is being sought.

3. The concept of meeting substitution violates the author’s intention to “ensure” that the public is involved during the consideration of a permit revision. Bill analyses capturing the development of AB1497 explicitly describe the importance placed on “ensuring landfills are operated in a manner that protects public health, the environment, the rights of workers and the local citizens who live near a landfill.”¹ As an avenue for ensuring public involvement, the concept of “informational meetings” was added to the legislation. The Initial Statement of Reasons (ISOR) describes these meetings as an opportunity to hear about the proposed solid waste activities to be permitted:

AB 1497 requires the EA to hold a public hearing before making a determination on the action to be taken by the EA on an accepted application package. The hearing as described in AB 1497 is an informational meeting where the public is provided an opportunity to hear about the proposed solid waste activities to be permitted and to comment on the preliminary determination being espoused by the EA.

The substitution concept denies the public this opportunity and therefore makes it inconsistent with the legislative intent. Therefore, please delete the following proposed text from **Section 21563(d)(4)**, “unless the EA substitutes another meeting/hearing that meets the provisions in §21660.4.”

4. Subparagraphs **(d)(5)** and **(d)(6)** of **Section 21653**, when read together, suggest that a significant change must be physical and applicable to permitted solid waste facilities. Section 21653(d)(5), defining non material change, currently reads:

¹ Please see AB 1497 2003 Bill Analyses dated July 6th, September 9th and 11th.

“Non material change” means a change that would require a change to the solid waste facilities permit but would not result in any physical change that would alter the approved design or operation of the facility.

Section 21563(d)(6) currently reads:

"Significant Change" means a change in design or operation of a solid waste facility where the EA has determined pursuant to §21665 that the change is of such consequence that the solid waste facilities permit needs to include further restrictions, prohibitions, mitigations, conditions or other measures to adequately protect public health, public safety, ensure compliance with State minimum standards or to protect the environment.

If a significant change is a “change in design or operation of a solid waste facility” and a non material change is a change that “would not result in any physical change that would alter the approved design or operation of the facility,” by definition, a non material change cannot be a significant change. If a non material change is not physical, a significant change, logically, must be. This thinking is consistent with the ISOR, which states that non material change category was necessary to “identify the type of change proposed by an operator that would qualify for a permit modification, rather than a permit revision.” Non material changes would never rise to a level of significance requiring a permit revision.

Please clarify the type of change and the type of facility to which Section 21563(d)(6) would apply by amending the section in the following way:

"Significant Change" means a physical change in design or operation of a permitted solid waste facility where the EA has determined pursuant to §21665 that the change is of such consequence that the solid waste facilities permit needs to include further restrictions, prohibitions, mitigations, conditions or other measures to adequately protect public health, public safety, ensure compliance with State minimum standards or to protect the environment.

Additionally, we reviewed prior EA guidance, LEA Advisory #54 “1998 Inspection Guidance for Solid Waste Landfills, to find further support for this perspective. Examples of significant changes include “tonnages increases, landfill elevation increases, expansions of operations into property not within the current permitted boundary, new operations (composting, energy recovery, etc.), and the acceptance of un-permitted wastes,” (page 11). These are physical changes in the design and operation of a solid waste facility.

Section 21620. CIWMB – Change in Operation. (new)

5. In light of the arguments presented above, Section 21620 should apply to the operators of *permitted* solid waste facilities proposing to make *physical* changes to

the design and operation of a permitted facility. Therefore, please amend the heading to read “Section 21650. CIWMB – Physical Change in Design and Operation of a Permitted Solid Waste Facility. (new).”

6. The activities listed as “Minor Changes” in **Section 21620(a)(1)** are almost entirely non material, non physical changes, and not changes “in design or operation (as defined in subdivision 21663(a))” as stated in Section 21620(a). As defined by Section 21663(a)(1) and (2), “design” means the physical layout of the facility and “operation” means the procedures, personnel, and equipment utilized to receive, handle and dispose of solid wastes and to control the effects of the facility on the environment. Accordingly, the Minor Changes list applies to changes to design or operation of a facility resulting in changes in the physical layout, in the physical procedures, personnel or equipment used on-site. The following items on the Minor Changes list do not represent changes in the “design” or “operation” of a facility. To clarify this point emphasis (*italics*) has been added to the following “minor changes” to highlight how these are not changes *in* the design or operation and should not be included in Section 21620.

(i) Correction of *typographical* errors in any documents/documentation

(iii) Changes in any *name and phone number or other contact information* that does not include a change of the owner or operator.

(i) Replacement of an existing environmental or operational monitoring point that has been damaged or rendered inoperable, *without change to location or design* of the monitoring point.

(ii) Updated changes to other regulatory agency documents that are included by reference in a RFI only and *will not result in a change to the design and/or operation that are within the LEA's authority.*

(iii) Updated changes to other regulatory agency documents that are included by reference in a RFI only and *will not result in a change to the design and/or operation.*

(iv) Changes in containers used for storage of materials *that does not interfere with the design and operation* of the facility.

(v) Change in *name only* of owner/operator.

(vi) Change in *narrative information* (e.g., background information) outside the permitted boundary.

(vii) Change to *facility signage wording* consistent with State minimum standards.

- (x) Adjacent land use *map*.
- (xii) Change in *designated* enforcement agency.
- (xiii) Changes in *name, address, or phone number* of contact in post-closure plan.
- (xiv) Changes to equipment maintenance operations associated with the operation of the facility that *will not change design or operation*.
- (xv) Purchase of *property adjacent to the facility* if not used for solid waste operations.
- (xvi) Updated changes to *documents* that are included by reference in a permit or RFI.
- (xvii) Regulation *re-numbering* as referenced in RFI.

In contrast, Item (ix), “changes to traffic patterns on site that do not affect off-site traffic” describes a physical change. Section 21620, as written, applies only to design and operational changes; “non material” changes, which are not changes in the design and operation of the permitted facility, should be removed from the Minor Changes list.

7. Because Section 21620 applies to changes in design and operation, 21620(a)(3) must be deleted from Section 21620(a). A modified permit is used to effect non material changes, and by definition a non material change is not a physical change in design or operation. Accordingly, Section 21620(a) should be modified to read:

(a) This section applies to any operator proposing to make a physical change in the design or operation (as defined in subdivision 21663(a)) of the permitted facility, where such change is subject to the authority of the EA acting pursuant to the Integrated Waste Management Act or regulations promulgated under such Act and one of the following categories apply: (1) Minor Change - the change qualifies as a minor change pursuant to §21620(a)(1), in which case the operator shall comply with §21620(a)(1)(E); (2) RFI Amendment - the EA has determined that an amendment to the RFI is required for the change, in which case the operator shall comply with §21620(a)(2); or (3) ~~Modified Permit - the EA has determined that the solid waste facilities permit requires modification pursuant to §21665(d), in which case the operator shall comply with §21620(a)(3); or~~ (4) Revised Permit - the EA has determined that the solid waste facilities permit requires revision pursuant to §21665(e) or §21620(4), in which case the operator shall comply with §21620(4).

8. The flow diagram provided at the very end of Section 21620 illustrates the additional and unnecessary 30 days that an applicant seeking a modified permit must undergo.

According to the flow diagram (later reinforced by Section 21666(c)) even if an applicant knows the non material change to the permit they intend to make requires a modified permit process, they must still first submit an RFI Amendment application, wait 30 days for an EA determination, then resubmit the application as a modified permit application and wait another 30 days. Please provide an opportunity for an operator and the EA to process a modified permit directly. CCR 27 Section 21670 Change of Owner Operator and/or Address provides a reasonable model for processing non material changes.

Section 21660.4 Substitute Meetings for EA Conducted Informational Meetings

9. As previously mentioned in the discussion of Issue 3, public notice was a focal point of the AB 1497. The ISOR states that "additional informational meeting requirement is necessary to comply with AB 1497 requirements, as well as to be consistent in providing a transparent and accessible permit process." However, the meeting substitution concept not only reduces the opportunity its public participation, but also conflicts with the requirement listed in Section 21660.2(b) to provide an opportunity once the application has been accepted and with the accessibility criteria listed in subsection (c). Please remove this concept from the regulations; from a noticing point of view, it actually discourages participation.

Section 21665. CIWMB – Processing Proposed Changes at Solid Waste Facility (new)

10. Section 21665 applies to permit changes proposed for a permitted solid waste facility. As such, the **heading** should be amended to read: Section 21665. CIWMB – Processing Proposed Permit Changes at a Permitted Solid Waste Facility (new).
11. **Section 21655(a)** fails to state the type of application package that should be submitted, though only two (RFI and New Permit) application packages appear to exist. As previously mentioned there is no opportunity to begin the modified permit process directly. Please clarify which application(s) should be completed.
12. The **decision tree** provided at the end of Section 21655(a) to illustrate the process used by the EA and the operator to determine how a change will be processed remains confusing. As non-material changes by definition will never be significant, switch the third and first boxes of the proposed decision tree flow diagram. Consistent with our request to refine terms the "proposed changes" discussed in the first box should read "proposed physical change."

Again, thank you for allowing us to participate in this process and share our concerns. We look forward to helping shape a practical set of regulations providing the clarity, consistency, and environmental protection equally sought by EAs, operators and the public. Please contact me if you have any questions.

Sincerely,



Don Gambelin
Vice President, Environment and Planning

Cc: Cindy Montañez, California Assembly Member
Margo Reid Brown, Chair, CIWMB
Jeffrey Danzinger, Member, CIWMB
Rosalie Mulé, Member, CIWMB
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